IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

M/s National Construction Co. Vs. State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL (W) NO.257/2005
against the order dated 1.6.2005 passed in
S.B. Civil Writ Petition No.3257/2005

Date of judgment : 8th Dec., 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.S. Singhvi for the appellant.
Mr. L.R. Upadhyay, Dy. Government Advocate.
Mr. Kamal Dave for the respondents.

BY THE COURT:-(PER HON'BLE RAJESH BALIA, J.)

Heard leaned counsel for the parties.

The writ petition filed by the appellant has been dismissed on the ground of latches only.

The facts of the case are that the appellant

was awarded a contract for carrying out earth work for laying down railway line from Km 176.06 to 178.40 for providing C & W repair yard at Shambhupura on Kota-Chittorgarh-Nimuch vide agreement dated 9.6.1988. As per notification of the Central Government issued by the Government of India, Ministry of Steel & Mines, Department of Mines by way of office memorandum dated 17.10.1989 directing for disturbing the ordinary earth by Railway for laying the railway line cannot be called an operation carried out for the purpose of winning the earth. Therefore, the question of payment for the said work by the Railway for construction of railway line does not arise.

The tenders were offered and accepted by the railways.

Subsequent thereto in the first instance the petitioner was served with a notice Annex.3 dated 29th June, 1989 calling upon the petitioner to pay Rs.91,56,000/- which comprised of Rs.7,63,000/- by way of royalty on the earth removed for the purpose of

construction of railway line and 12 times penalty thereof in all Rs.91,56,000/- which was objected to by the petitioner by submitting a letter dated 6.7.1989 that royalty was not payable. Again a notice was received by the petitioner on 9.7.1989 for deposit of the aforesaid sum which was objected to and a revision was filed before the Board of Revenue which was decided on 14th March, 1991 as premature by stating that since it is only a notice, the petitioner should appear before the authority issuing notice and raise his objections thereto.

However, no such determination has taken place thereafter by the Assistant Engineer Mining, who has raised the demand and successive notice has been issued on 29th March, 2005.

This led to filing of the writ petition No.3257/2005 and the same has been dismissed by learned Single Judge on the ground of latches.

It is true that the circular by way of office memorandum issued by the Government of India and

order of Board of Revenue passed in the revision filed by the petitioner was not before the learned Single Judge and the same has been produced along with the memo of appeal. On notice being issued, the State Government filed reply which is primarily asking for dismissal of the writ petition on the ground of latches. However, the fact about the aforesaid orders as well as about the order passed by the Board of Revenue has not been disputed.

In the circumstances, it is apparent that the appellant has resorted his remedy available to him promptly by approaching the Board of Revenue but that remedy was not allowed to him on the ground of being premature.

In view thereof, the matter remained where it was when the order was passed by the Board of Revenue in 1991 holding the remedy availed by the petitioner to be premature as according to it no demand can be enforced unless it has been determined by competent officer or he was left to go to Assistant Mining Engineer. The petitioner did file his objection before competent

officer against the demand. The same had not been determined but was followed with notice in question. In these circumstances, when without determining any demand, which was due from the petitioner, by competent authority, a demand notice was issued in 2005, it cannot be said that the petition was suffering from any latches.

According to the decision of the Board of Revenue, the demand was to be determined by competent authority after giving a notice and deciding the objections, if any, filed by him. Reliance has also been placed by the learned counsel for the appellant on a Bench decision of this Court in D.B. Civil Special Appeal No.335/2001 State of Rajasthan Vs. Bhinmal Co-operative Marketing Society Ltd. decided on 13.3.2002 in support of his contention that unless the demand is determined by competent authority, the coercive measure of the Land Revenue Act cannot be resorted to.

We may notice that it is to support the petitioner inter alia on the ground that no royalty is

payable on removal of earth for the purpose of laying down the railway line and the embankment of railways because it does not amount to mining operation in consonance with the office memorandum which was issued by the Department of Steel and Mines.

In the circumstances, we are of the opinion that dismissal of the petition on the ground of latches was not justified and in that view the earlier decision by the Board of Revenue suffered by the parties including the State of Rajasthan, which is seeking to recover the amount in question without the amount is determined by the competent authority, no recovery can be effected. The appeal deserves to be allowed.

Accordingly, the appeal is allowed. The judgment under appeal is set aside. The writ petition is allowed. The demand notices under challenge are quashed. However, it will be open for the respondent State to determine the amount, if any due from the petitioner appellant for removing of soil for earth work in accordance with the law after giving an opportunity to

raise objection and also by considering the aforesaid notification issued by the Central Government through its Steel and Mining Department. If necessary, notice may also be issued to Union of India through Railway Department and Department of Mines and Steel.

No order as to costs.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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